

SENATE BILL 3110
By McNally

AN ACT to amend Tennessee Code Annotated, Title 47,
Chapter 18, and to enact the "Tennessee
Financial Information Privacy Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The title of this act is, and may be cited as, the "Tennessee Financial Information Privacy Act".

SECTION 2. Tennessee Code Annotated, Title 47, Chapter 18, is amended by inserting Sections 3 through 8 below as a new, appropriately designated part thereto.

SECTION 3. As used in this part, unless the context otherwise requires:

(1) "Affiliate" means any entity that controls, is controlled by, or is under common control with, another entity;

(2) "Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information contained in the notice;

(3) "Consumer" means an individual resident of this state, or that individual's legal representative, who obtains or has obtained from a financial institution a financial product or service to be used primarily for personal, family, or household purposes;

(4) "Financial institution" means any institution that primarily engages in financial activities as defined in 12 U.S.C. § 1843(k) and that is doing business in this state;

(5) "Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to a financial activity as defined in 12 U.S.C. § 1843(k). Financial service includes a financial institution's evaluation or brokerage of information that the financial

institution collects in connection with a request or an application from a consumer for a financial product or service;

(6) "Necessary to effect, administer, or enforce" means the following:

(A) The disclosure is required, or is a usual, appropriate, or acceptable method to carry out the transaction or provide a product or service of which the transaction is a part, or to record, service or maintain the consumer's account in the ordinary course of providing the financial service or product, or to administer benefits or claims relating to the transaction;

(B) The disclosure is required or is one of the lawful or appropriate methods to enforce the rights of the financial institution or of other persons engaged in carrying out the financial transaction or providing the product or service;

(C) The disclosure is required, or is a usual, appropriate, or acceptable method for insurance underwriting or the placement of insurance products by licensed agents and brokers with authorized insurance companies at the consumer's request, for reinsurance, stop loss insurance, or excess loss insurance purposes, or for any of the following purposes as they relate to a consumer's insurance:

(i) Account administration;

(ii) Reporting, investigating, or preventing fraud or material misrepresentation;

(iii) Processing premium payments;

(iv) Processing insurance claims;

(v) Administering insurance benefits, including utilization review activities;

(vi) Participating in research projects; or

(vii) As otherwise required or specifically permitted by federal or state law;

(D) The disclosure is required, or is a usual, appropriate, or acceptable method, in connection with the following:

(i) The authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit or other payment card, check, or account number, or by other payment means;

(ii) The transfer of receivables, accounts, or interests therein; or

(iii) The audit of debit, credit, or other payment information; or

(E) The disclosure is required in a transaction covered by the federal Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 et seq., in order to offer settlement services prior to the close of escrow, provided that the nonpublic personal information is disclosed for the sole purpose of offering those settlement services and the nonpublic personal information disclosed is limited to that necessary to enable the financial institution to offer those settlement services in that transaction;

(7) "Nonaffiliated third party" means any entity that is not an affiliate of, or related by common ownership or affiliated by corporate control with, the financial institution;

(8) "Nonpublic personal information" means personally identifiable information that is either provided by a consumer to a financial institution, that is the result of any transaction with the consumer or any service performed for the consumer, or that is otherwise obtained by the financial institution in connection with providing a financial product or service to a consumer. "Nonpublic personal information" does not include

publicly available information that the financial institution has a reasonable basis to believe is lawfully made available to the general public from federal, state, or local government records, widely distributed media, or disclosures to the general public that are required to be made by federal, state, or local law. "Nonpublic personal information" shall include any list, description, or other grouping of consumers, and publicly available information pertaining to them, that is derived using any nonpublic personal information other than publicly available information, but shall not include any list, description, or other grouping of consumers, and publicly available information pertaining to them, that is derived without using any nonpublic personal information. "Nonpublic personal information" includes both personal and financial information that is identifiable to a particular person and includes but is not limited to the following:

- (A) Information a consumer provides to a financial institution on an application to obtain a loan, credit card, or other financial product or service;
- (B) Account balance information, payment history, overdraft history, and credit or debit card purchase information;
- (C) The fact that an individual is or has been a consumer of a financial institution or has obtained a financial product or service from a financial institution;
- (D) Any information about a financial institution's consumer if it is disclosed in a manner that indicates that the individual is or has been the financial institution's consumer;
- (E) Any information that a consumer provides to a financial institution or that a financial institution or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

(F) Any personally identifiable information collected through an Internet cookie or an information collecting device from a Web server; and

(G) Information from a consumer report; and

(9) "Widely distributed media" means media available to the general public and includes a telephone book, a television or radio program, a newspaper, or a Web site that is available to the general public on an unrestricted basis.

SECTION 4. Except as otherwise provided in this part, a financial institution shall not sell, share, transfer, or otherwise disclose nonpublic personal information to or with any affiliate or nonaffiliated third party without the explicit prior consent of the consumer to whom the nonpublic personal information relates.

SECTION 5.

(a)

(1) A financial institution may share a consumer's nonpublic personal information with any affiliate or nonaffiliated third party if the financial institution has obtained a consent acknowledgment from the consumer that complies with subdivision (2) below and that authorizes the financial institution to disclose or share the nonpublic personal information. A financial institution shall not discriminate against or deny an otherwise qualified consumer a financial product or a financial service because the consumer has not consented pursuant to this part to authorize the financial institution to disclose or share nonpublic personal information with any nonaffiliated third party. Nothing in this section shall prohibit a financial institution from denying a consumer a financial product or service if the consumer did not consent to disclosure of nonpublic personal information and the financial institution could not provide the product or service to a consumer without such consent.

(2) A financial institution shall utilize a form, statement, or writing to obtain consent to disclose nonpublic personal information to nonaffiliated third parties as required by this part. The form, statement, or writing shall meet all of the following criteria:

(A) The form, statement, or writing is a separate, written document that is dated and signed by the consumer, and that states clearly and conspicuously that by signing the document the consumer is consenting to the disclosure to nonaffiliated third parties of nonpublic personal information pertaining to the consumer;

(B) The form, statement, or writing clearly and conspicuously discloses that the consent will remain in effect until revoked or modified by the consumer, that the consumer may revoke the consent at any time, and the procedure for the consumer to revoke consent; and

(C) The form, statement, or writing clearly and conspicuously informs the consumer that the financial institution will maintain the document or a true and correct copy, that the consumer is entitled to a copy of the document upon request, and that the consumer may want to make a copy of the document for the consumer's records.

(b) A financial institution may disclose to or share a consumer's nonpublic personal information with a director, officer, employee or agent of an affiliated financial institution if such disclosure is limited to information necessary or appropriate to the fulfillment of any such person's duties and responsibilities to the financial institution or institutions, and if the disclosure is otherwise in compliance with state and federal law.

(c) A financial institution is not disclosing or sharing information with an affiliate merely because information is maintained in common information systems or databases,

and employees of the financial institution and its affiliate have access to those common information systems or databases, or a consumer accesses a Web site jointly operated or maintained under a common name by or on behalf of the financial institution and its affiliate, provided that nonpublic personal information is not further disclosed or used by an affiliate except as permitted by this part.

(d) A financial institution may release nonpublic personal information of a consumer with which the financial institution has a relationship to a nonaffiliated financial institution for purposes of jointly offering a financial product or financial service pursuant to a written agreement with the financial institution that receives the nonpublic personal information provided that all of the following requirements are met:

(1) The financial product or service offered is a product or service of, and is provided by, at least one of the financial institutions that is a party to the written agreement;

(2) The financial product or service is jointly offered, endorsed, or sponsored, and clearly and conspicuously identifies for the consumer the financial institutions that disclose and receive the disclosed nonpublic personal information;

(3) The written agreement provides that the financial institution that receives the nonpublic personal information is required to maintain the confidentiality of the information and is prohibited from disclosing or using the information other than to carry out the joint offering or servicing of a financial product or financial service that is the subject of the written agreement;

(4) Notwithstanding this subdivision, until July 1, 2007, a financial institution may disclose nonpublic personal information to a nonaffiliated financial institution pursuant to a preexisting contract with the nonaffiliated financial

institution, for purposes of offering a financial product or financial service, if that contract was entered into on or before July 1, 2006. Beginning on July 1, 2007, no nonpublic personal information may be disclosed pursuant to that contract unless all the requirements of this part are met.

(e)

(1) A financial institution may disclose or share nonpublic personal information with a nonaffiliated third party that is not a financial institution for the purpose of issuing a credit card in the name of the nonaffiliated third party if the nonpublic personal information that is disclosed to or shared with the nonaffiliated third party is limited to name, address, telephone number, electronic mail address, and a record of purchases made using the credit card in a business establishment, including a Web site, bearing the brand name of the nonaffiliated third party of the financial institution's customers who obtained the credit card.

(2) A financial institution may disclose or share nonpublic personal information with a nonaffiliated third party that is not a financial institution for the purpose of providing on behalf of the nonaffiliated third party, pursuant to a written agreement between the financial institution and the nonaffiliated third party, a financial product or service other than a credit card, if the nonpublic personal information that is disclosed to or shared with the nonaffiliated third party is limited to the name, address, telephone number and electronic mail address of the financial institution's customers who obtained the product or service.

(3) Prior to making any disclosure pursuant to subdivisions (1) or (2) of this subsection (e), the financial institution shall have a written agreement with

the nonaffiliated third party that requires the nonaffiliated third party to maintain the confidentiality of the nonpublic personal information and that prohibits the nonaffiliated third party from using the information for any purposes other than verifying membership, verifying the consumer's contact information, or offering the nonaffiliated third party's own products or services to the consumer.

(4) No customer list shall be disclosed pursuant to this subsection if the list is disclosed in a way that reveals or permits extrapolation of any additional nonpublic personal information about any customer on the list.

(f) A financial institution may disclose or share nonpublic personal information with any affiliate or nonaffiliated third party under the following circumstances:

(1) The nonpublic personal information is necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with servicing or processing a financial product or service requested or authorized by the consumer, or in connection with maintaining or servicing the consumer's account with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of that entity, or in connection with a proposed or actual securitization or secondary market sale, including sales of servicing rights, or similar transactions related to a transaction of the consumer;

(2) The nonpublic personal information is released to the consumer after proper identification or is released at the direction of the consumer after proper identification;

(3) The nonpublic personal information is released:

(A) To protect the confidentiality or security of the financial institution's records pertaining to the consumer, the service or product, or the transaction therein;

(B) To protect against or prevent actual or potential fraud, identity theft, unauthorized transactions, claims, or other liability;

(C) For required institutional risk control, or for resolving customer disputes or inquiries;

(D) To persons holding a legal or beneficial interest relating to the consumer, including for purposes of debt collection; or

(E) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(4) The nonpublic personal information is released to provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the institution's compliance with industry standards, and the financial institution's attorneys, accountants, and auditors;

(5) The nonpublic personal information is released to the extent specifically required or specifically permitted under other provisions of law to local, state or federal law enforcement agencies, to any department of state government for the purpose of carrying out functions within its jurisdiction, in any report, disclosure or return required by federal or state law, or to any officer, employee or agent of any other regulatory agency for use in the exercise of that person's duties as an officer, employee or agent of that regulatory agency;

(6) The nonpublic personal information is released in connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a

business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of the business or unit;

(7) The nonpublic personal information is released to comply with a properly authorized civil, criminal, administrative, or regulatory investigation or subpoena or summons by federal, state, or local authorities or otherwise to respond to judicial process;

(8) The nonpublic personal information is released to an affiliate or a nonaffiliated third party in order for the affiliate or nonaffiliated third party to perform business or professional services, such as printing, mailing services, data processing or analysis, collection services, or customer surveys, on behalf of the financial institution, provided that all of the following requirements are met:

(A) The services to be performed by the affiliate or nonaffiliated third party could lawfully be performed by the financial institution;

(B) There is a written contract between the affiliate or nonaffiliated third party and the financial institution that prohibits the affiliate or nonaffiliated third party, as the case may be, from disclosing or using the nonpublic personal information other than to carry out the purpose for which the financial institution disclosed the information, as set forth in the written contract;

(C) The nonpublic personal information provided to the affiliate or nonaffiliated third party is limited to that which is necessary for the affiliate or nonaffiliated third party to perform the services contracted for on behalf of the financial institution; and

(D) The financial institution does not receive any payment from or through the affiliate or nonaffiliated third party in connection with, or as a result of, the release of the nonpublic personal information;

(9) The nonpublic personal information is exchanged, in the regular course of business, between a financial institution and a consumer reporting agency, provided such exchange is in compliance with all applicable federal and state laws; or

(10) The nonpublic personal information is released in connection with a written agreement between a consumer and a broker-dealer registered under the federal Securities Exchange Act of 1934 or an investment adviser registered under the federal Investment Advisers Act of 1940 to provide investment management services, portfolio advisory services, or financial planning, and the nonpublic personal information is released for the sole purpose of providing the products and services covered by that agreement.

(g) Nothing in this section shall prohibit a financial institution from disclosing or sharing nonpublic personal information as otherwise specifically permitted by this part.

SECTION 6. Except as otherwise provided in this part, an entity that receives nonpublic personal information from a financial institution under this part shall not disclose this information to any other entity, unless the disclosure would be lawful if made directly to the other entity by the financial institution. An entity that receives nonpublic personal information pursuant to any authorization to disclose information set forth in this part shall not use or disclose the information except in the ordinary course of business to carry out the activity pursuant to which the information was received.

SECTION 7.

(a) Nothing in this part shall be construed as altering or annulling the authority of any department or agency of the state to regulate any financial institution subject to its jurisdiction.

(b) Nothing in this part is intended to change existing law relating to access by law enforcement agencies to information held by financial institutions.

SECTION 8.

(a) A violation of this part constitutes a violation of the Tennessee Consumer Protection Act, compiled at part 1 of this chapter. For the purpose of the application of the Tennessee Consumer Protection Act, any violation of the provisions of this part shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of any trade or commerce and subject to the penalties and remedies as provided by that act.

(b) If the attorney general has reason to believe that any financial institution or director, officer, employee, other person or agent acting on behalf of a financial institution, has violated any provision of this part, the attorney general may institute a proceeding under this chapter.

SECTION 9. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 10. This act shall take effect July 1, 2006, the public welfare requiring it.